

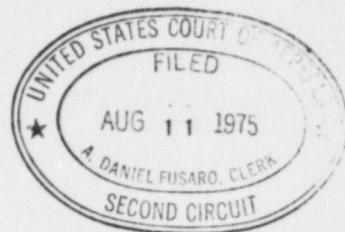
*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

75-6003

AUG 11 1975



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-6003

JOHN C. SZYKA

Appellant

v.

Appellee

UNITED STATES SECRETARY OF DEFENSE
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL BRIEF FOR THE APPELLANT

This is an appeal from a dismissal by the Honorable Robert C. Zampano of Plaintiff appellant complaint, seeking damages from the United States Secretary of Defense." In his ruling filed January 31, 1975 Judge Zampano found that plaintiff had not met the applicable two year statute of limitations.

STATEMENT OF FACTS

In his complaint filed September 10, 1974, Plaintiff acting pro se, commenced this action against the United States Secretary of Defense in which he seeks damages in the amount of 6.8 Million dollars. The District Court found the complaint to state that, while plaintiff was sailing with his family on Long Island Sound on the night of September 18, 1971 he was fired upon and shelled by persons unknown in furtherance of a conspiracy on the part of unnamed government officials to threaten and intimidate him. The suit was filed after the two year period set forth in 46 United State Code, Section 745. It should be here noted Plaintiff had sent by registered mail to the Former United States Attorney General, Elliot Richardson on September 29, 1973, this but eleven days after said statute of limitations informing the Attorney General of this shell fire attack--the Attorney General received this letter October 2, 1973. From that date to the present, twenty two months have slipped away without investigation, indeed but that the United States Department of Justice acts not in good faith-- their sworn duty, to enforce the laws without fear or favor.

ARGUMENT

The question arises, had the District Court erred--And though the District Court had been correct in finding Plaintiffs jurisdictional grounds as lying within the Suits in Admiralty Act,--- it should be here noted, in Plaintiffs first filing of Civil Action on September 18, 1974 on page eight, he, Plaintiff had well cited his rights under that of Admiralty Law.

Bersey and Henry S. Cohen, United States Attorney's had obscured the judgement of the District Courts Decision. It has been well established by plaintiff, that The District Court had injudiciously refrained from honoring Appellants challenges of Constitutionality of said cited statutes. Such omission by the District Court Judge, seriously violates Plaintiffs rights of due process and the equal protection of the laws. This inaction alone, this failure of consideration of Constitutional challenges of said statutes, constitutes grounds of reversal of the District Courts Judgement of Dismissal.

Appellees Counsel further obscures the recorded facts, for he proceeds to take Appellant Plaintiff, to task citing Kelly v. Smith 485 F. 2d 520 (5th cir. 1973). The Court will note that it had been the United States Attorney's (appellees Counsel) whom first suggested Kelly v. Smith as having a sufficient relationship to that of appellants claim, this in establishing the traditional maritime and admiralty jurisdiction.

In answer to Justice Holmes remark--Appellant construes the mentioned authority (Congress) that makes the law---in this case the Suits in Admiralty Act---

"Congress has only those powers granted to it by the states in the Constitution"

and here the laws of the Constitution which deprives the Congress are many and contained in the Constitution----Article 1 section eight, line 10

"Congress shall have power to define and punish felonies committed on the high seas--"

Here is an absolute right that Congress has chosen to ignore. In no conceivable way is Article 1 section eight line ten construed to even imply that Congress shall make allowances-- not even statutes of limitation, the insistence made, is for Congress to well define and punish, felonies committed on the high seas.

Of consequence, The Supreme Court of the United States has uniformly held that Congress has only those powers granted to it by the states in the Constitution---"

Unquestionably it becomes the clear duty of Congress to define and punish felonies committed on the high seas-- and yet,despite this obvious compulsory process- the Congress circumvents this duty by the legislative enactment of the Suits in Admiralty Act, as amended, 46 U.S.C. s 742 provides that----

"In cases, where----- a private person or property were involved, a proceeding in admiralty could be maintained:"

This said statute is clearly without precise definition--in law, if arbitrary and discriminatory enforcement is to be prevented, laws must provide delineated standards for those who apply them. It is a basic principle of due process that a statute is void for vagueness if it's true meaning are not clearly defined.

Said statute and section 745, the two year statute of limitations as applied, by both, the defense appellees counsel, along with the judgement of the District Court, is unquestionably erroneous in it's application, for in Plaintiffs claim, the complaint establishes the clear but simpler term, attempted murder thru the act or acts of a continuing conspiracy-- Plaintiff cannot conceive of his mind the rationale of the Suits in Admiralty Act, a statute which for all intents and purposes is a governmental catch-all restriction, one covering the possibility of murder,attempted murder including violent physical assault committed by employees of Federal Government and inflicted upon those unfortunates whom sail upon Navigable waters-- of note to this Court it must be observed that this shell fire attack had taken place at a point beyond the middle water of Long Island Sound,---Plaintiff is then bound,by jurisdictional law,to seek redress thru the Suits in Admiralty Act, the individual states three mile jurisdiction, deprives Plaintiff of those state statutory laws favorable to him

Appellant construes the government defensive stance, to so hide behind enacted statutes of limitations, such statutes that contravene the Constitution--as an attempt to defraud appellant and family members of their right to Honest Government.

Appellant has shown conclusive evidence of the inherent dangers generating from that of the Suits in Admiralty Act and it's two year statute of limitations-- to continue to sustain this restriction is for government and the Courts to factually support and condone serious crime, it then becomes this courts duty to apply the long proven checks and balances of government-----.

Counsel of Appellee refuses to assent to the laws of the Constitution, in addition he refrains from answering the rule of law, Supreme Court of the United States, Thomas v. Collins U.S. 516-323- the burden of proof falls upon those supporting the restriction and Government must show and be justified by clear and present danger, threatened not doubtfully nor even remotely--But he, Appellees Counsel maintains this statute of limitations here is substantial, conditioning the ground on which the United States Consents to be sued- in effect he supports the restriction but is unable to answer how the nation would be effected by permanent injunction against the restriction.

The Suits in Admiralty Act and the two year limitation are clearly without definition and parallel- such lack of clear delineation deprives Plaintiff of due process of law- for the Court must ask of itself, what are the statutes of limitations on that of attempted murder--? does such a clearly undefined law as the Suits in Admiralty Act, propose to adapt itself, as if by magic, to cover government against any and all manner of crime--no matter how despicable the crime--? In direct contrast there had been seven adult United States Citizens, those whose lives had been jeopardized thru the devious but certainly heinous means of employing high explosive phosphorus fragmentation shells-actual instruments of war, these shell bursts so brought to bear against appellant and members of his family followed their craft over a distance of several miles.

managed to avoid contact with those following shell bursts.

In further supportive argument, The First Amendment reads--

"Congress shall make no law abridging the people's right to petition the government for a redress of grievances."

In citing Thomas v. Collins U.S. 516-323 Supreme Court of the United States

"The grievances for redress of which the right of petition was insured."

Here the founding fathers left no question of a continuing right of redress. Here too, Plaintiff relies on the rule of law---for the adverse party in continuing to insist on supporting the restriction, Appellees Counsel must show and be justified by clear and present danger, threatened not doubtfully nor even remotely, to the present, Counsel for the Appellee has refrained from doing so- to this regard he has relinquished whatever protection the restriction provided,----Constitutional law must prevail.

Plaintiff urges more broadly that the statute is an invalid restraint upon his basic Constitutional rights, for to so be deprived of redress, he also is deprived of due process of law----

The seventh amendment stipulates:

"In suits of common law, the right of trial by jury shall be preserved--"

It becomes more apparent that the losses incurred arising out of that restriction, become more and more unbearable, one questions if the Constitution remains a viable document.

It is an established fact of law for a United State Citizen to not expect to be defrauded of his right to Honest Government--why then does the Government persist in hiding behind the Statute of limitations.

The Fourteenth Amendment specifies:

"Nor shall any state deprive any person within it's jurisdiction the equal protection of the laws."

Plaintiff continues to seek proper redress via the judicial processes, he seeks due process and the equal protection of the laws,

thwart his pursuit of justice, it then becomes evident, our government at times, in this case action, in a tyrannical fashion of convenience or necessity are not a nation of laws--but more rather, some strange necessity dictates that certain conspirators, men capable of murder of United States Citizens must be protected---?

The suits in Admiralty Act and the two year limitation are clearly without definition--such lack of clear delineation deprives appellant of due process of law.

Congress, in enacting above said statutes has violated it's sworn duty, the compulsory process of Article 1 section eight line ten----

"To define and punish felonies committed on the high seas---" Long Island Sound is part and parcel of the high seas.

Congress has, in enacting the above said statutes invalidated the First Amendment--for the Congress has attempted to diminish, to abridge, to modify the Constitution thru legislative enactment.

The Tenth Amendment---

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

In essence, the constitution for good reason, more deprives government of power then that it gives, the peoples power to petition government for redress of grievances shall not be infringed--not even by statute of limitations.

CONCLUSION

For all the forgoing reasons Appellant moves the Court to Rule and Grant to him the Order for Permanent Injunction from The Suits in Admiralty Act, as amended Title 46 U.S.C. s 742 and s 745.

He moves the Court, for Reversal of the District Court Judges Order of Dismissal of Appellant's Claim as made against Government, the District Courts refusal to honor Constitutional challenges.

Appellant moves the Court for Demand of Judgement based upon Defaultive Acts. The Government consistently has shown bad faith in not offering defenses in opposition to these charges made by

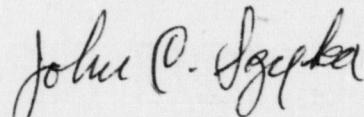
of limitations. If ever there is a more serious case causing irreperable damage to a family of Americans, it cannot exceed the severity of this complaint. All of Appellants children have been scattered to the winds- they are completely disenchanted with this government as a nation.

Beyond question the present matter before this Court is serious indeed, Plaintiff seeks a permanent injunction against the Suits in Admiralty Act- but when seperating the chaff from the wheat he is totally justified in this, his pursuit, such justification is well established in the following--

The Supreme Court of the United States Thomas v. Collins U.S. 516-323 the justices decreed of our Constitution thus----

"That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation which determine what standard governs the choice:"

Respectfully Submitted

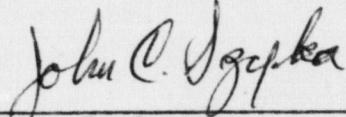


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CERTIFICATION

This is to certify that sufficient copies of this enclosing brief- the original plus three copies have been mailed U.S. Registered mail to the United States Court of Appeals For the Second Circuit.

Also two certify copies mailed registered mail to Messer's Peter C. Dorsey and Henry S. Cohen, United States Attorneys-Counsel for the Appellee 141 Church Street, New Haven, Connecticut 06110



John C. Szyka
Pro se
28 Legion Avenue
New Haven, Connecticut 06511

Mortar Shell Uncovered By Milford Clamdigger

MILFORD — A man raking for clams off Silver Beach Sunday afternoon uncovered a little more than he bargained for — a 30-millimeter mortar shell.

The World War II vintage explosive, about eight inches in length and four inches in circumference, was carried by the

man to the crowded beach and placed on the sand.

A startled lifeguard called police, who in turn notified the fire department. After being placed in a solid container, the shell was brought out to a magazine storage area at the Barrett Construction Co. where it will be detonated.

In this incident of discovered live Mortar Shell, Appellant Plaintiffs investigation thru that of the Milford Fire Chief one Mr. Healy and thru the Milford Police Dept. — Their report and newspaper report are inaccurate. Plaintiff interviewed the mentioned Life Guard, one Mr. Roy Hirth, -- his related story that the clam digger an elderly gentleman obviously of Italian origin and unable to speak english, while digging for clams at a position approximating one hundred yards from shore, he pulled up this live Mortar shell which had been deeply imbedded within the mud, -- obviously the water and silty soft mud succeeded in rendering the Mortar shell to not explode--.

The Milford Police record No. 669-177 of this report reveals it to be dated 8-3-75 of discovery and approximately 1431 hours, the clam digger dropped the Mortar shell in the water and ran to the beach to tell his wife, who in turn, speaking very little english informed the Life Guard, with the aid of others which, then found the Mortar shell, the Life Guard carried this shell up on to the beach clearing the area of people, he next called the Fire Dept. another error here being this shell had been discovered at Walnut beach of Milford. This places this shell at a position North West of Charles Island of the shore, the Court will note appellants previously enclosed newspaper article Entitled "Lethal Material Found By Diver Off Charls Island" dated 8-72 Milford Citizen in which it had been disclosed that large phosphorus fragments had been found South East of Charles Island. This had been Plaintiffs sailed course parallelling the Milford, Connecticut and Charles Island shore. Indubitably there remain evidences sufficiently supporting Plaintiffs statements. He, Plaintiff is unable to accept the why of his waiting so terrible long for the mere right of redress.?

Seizing such objects thru the Subpeona Duces Tecum may establish army ordinance identifying nos. as year of manufacture Also the chemical composition, the Phosphorous fragments, etc.

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Station WSFO Bridgeport, Conn.

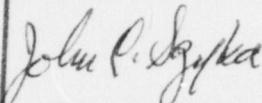
Date May 24, 1974

*I hereby certify that records of the National Oceanic
and Atmospheric Administration indicate:* 9 pm September 18, 1971

The weather was cloudy with 7 miles visibility. Temp 68 d.f. Wind from the northeast at 12 mph. pressure 30.24 and unsteady. Surface of the ground was dry. The sky was covered by a total overcast at 3200 feet.

This official weather report aides to confirm appellees description refer exhibit A Filed Sept. 18, 1974 under complaint United States District Court, District of Connecticut page 3 two thirds down of this page appellants description of solid overcast, exactly as this official document discloses, what must be considered is the unusualness of this particular day and weather.

Appellant



John C. Szyka


Carl R. Johnson

Meteorologist in Charge

* U.S. G.P.O. 1973-769-567/578 DEC 1973